IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11610 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINODKUMAR @ PAPPU BHANVARLAL JAIN

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY

Appearance:

MS BANNA DUTTA FOR MR CHETAN B RAVAL for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 16.4.2003 passed by the Police Commissioner, City of Ahmedabad ,

against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 16.4.2003.

2. The grounds served upon the petitioner and as placed on record indicates that the offences came to be registered against the petitioner under Sections 66(1)(b), 65(a)(e), 81, 83 and 116(b) of the Bombay Prohibition Act. The detaining authority also took into consideration two in-camera statements recorded by the proposing authority on 13.4.2003 revealing the incidents of 15.3.2003 and 1.4.2003, wherein from the witnesses the petitioner alleged to have demanded vehicles for transporting liquor illegally. On refusal, the witnesses were beaten and public order was disturbed.

3. Learned Advocate Ms.Banna Dutta for Mr. CB Raval for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length. Learned AGP has produced the affidavit-in-reply filed by the detaining authority, which is also taken into consideration.

4. From various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of solely on the ground that whether the detaining authority took into consideration the vital aspects of the matter. The grounds placed on record discloses that the petitioner was in judicial custody when the order of detention came to be served upon him. Learned Advocate for the petitioner makes a statement that till today he is in judicial custody in the said criminal case registered against the petitioner and he has not moved any bail application. The detaining authority came to the conclusion that the petitioner was likely to be released on bail and was likely to be indulged in illegal activity of selling liquor. Apparently, from the record, it transpires that there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail. The facts of the case, therefore, are squarely covered by the decision of the Apex Court in the matter of AMRUTLAL AND OTHERS vs. UNION GOVERNMENT THROUGH SECRETARY, MINISTRY OF FINANCE AND OTHERS, reported in AIR 2000 SC 3675. In this case, there was no material before the detaining authority to come to the conclusion that the petitioner was likely to be released on bail.

Thus, the order impugned in this petition therefore is required to be quashed on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Police Commissioner, Ahmedabad City, on 16.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair